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February 24, 2012

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

ENTERED  
Office of Proceedings

FEB 24 2012

Part of  
Public Record

RE: **Finance Docket No. 35583, *Eastern Alabama Railway LLC v. Utilities Board of the City of Sylacauga***

Dear Ms. Brown:

On February 22, 2012, the Utilities Board of the City of Sylacauga (the "Utilities Board") filed a Motion to Strike, which also contained sur-rebuttal to the Rebuttal filed by the Eastern Alabama Railway LLC ("EARY") on February 21, 2012. EARY is filing this letter to notify the Surface Transportation Board that it will respond to the Motion to Strike no later than February 29, 2012. The Utilities Board misstates the purpose of rebuttal and cites statements in the rebuttal that were legitimate responses to facts and issues raised the Reply filed by the Utilities Board, such as EARY stating that it was seeking an annual \$680 fee for the new crossing (Motion at 5) compared to the numerous statements by the Utilities Board about the unrevealed "unreasonable fees" sought by EARY (Reply at 8). In addition, the Utilities Board again misstates the burden of proof because it continues to ignore the distinction between declaratory order proceedings that is on referral from a court and a declaratory order proceeding begun by a party without court referral. 5 U.S.C. §554(a)(5).

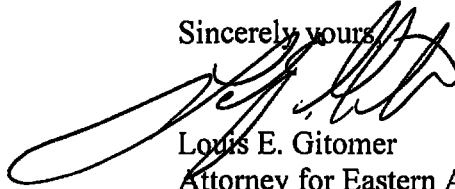
In addition, the Utilities Board is arguing that EARY is seeking preemption of all condemnation proceedings, while EARY seeks only preemption of the pending condemnation proceeding. The Utilities Board also argues the facially inaccurate argument that the Alabama courts should be allowed to determine whether condemnation in this case will result in interference with railroad operations, a matter that is clearly within the exclusive jurisdiction of the Board under 49 U.S.C. 10501(b), which states "The jurisdiction of the Board over (1) transportation... is exclusive" where "transportation includes (A) ... property ... of any kind ... related to the movement of ... property... and (B) services related to the movement... of ... property." 49 U.S.C. 10102(9).

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EARY will file a full reply to the Motion, as specifically permitted by 49 C.F.R.  
1104.13(a), by February 29, 2012.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'L. Gitomer', with a large, sweeping flourish extending to the left.

Louis E. Gitomer  
Attorney for Eastern Alabama Railway LLC

Cc: Parties of Record